

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Application by BellSouth Corporation,	)	
for Authorization To Provide In-Region,	)	
InterLATA Services	)	**WC Docket No. 02-307**
in the States of Florida and Tennessee	)	
	)	

COMMENTS OF AT&T CORP.

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FCC ORDERS CITED

SHORT CITE	**FULL CITE**
Access Charge Reform NPRM	*Access Charge Reform*, Fifth Report And Order And Further Notice Of Proposed Rulemaking, 14 FCC Rcd. 14221 (rel. August 27, 1999).
BellSouth Louisiana II Order	Memorandum Opinion and Order, *Application of BellSouth Corporation, et al. for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd. 20599 (1998)
Five- State 271 Order	Memorandum Opinion and Order, *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., And BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 02-150 (rel. Sept. 18, 2002)
Georgia/Louisiana 271 Order	Memorandum Opinion and Order, *Joint Application of BellSouth Corporation et al. for Provision of In-Region InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35 (rel. May 15, 2002)
KS/OK 271 Order	Memorandum Opinion and Order, *Joint Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237 (2001)
Local Competition Order	First Report and Order, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd. 15499 (1996), *aff'd in part and vacated in part by Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part by AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721 (1999)
Massachusetts 271 Order	Memorandum Opinion and Order, *Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts*, 16 FCC Rcd. 8988 (2001)
Michigan 271 Order	Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997)

SHORT CITE	**FULL CITE**
New Jersey 271 Order	Memorandum Opinion and Order, *Application of Verizon New Jersey Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in New Jersey*, WC Docket No. 02-67 (rel. June 24, 2002)
NY 271 Order	Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999)
Non-Accounting Safeguards	First Report and Order and Further Notice of Proposed Rulemaking, *Implementation of the Non-Accounting Safeguards of Section 271 and 271 of the Communications Act of 1934 as amended*, 11 FCC Rcd. 21905 (1996)
Pennsylvania 271 Order	Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, 16 FCC Rcd. 17419 (2001)
Texas 271 Order	Memorandum Opinion and Order, *Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354 (2000)
Vermont 271Order	*Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Vermont*, CC Docket No. 02-7 (rel. April 17, 2002)

DECLARATIONS IN SUPPORT OF AT&T's OPPOSITION TO BELLSOUTH'S SECTION 271 APPLICATION FOR FLORIDA AND TENNESSEE

WC Docket No. 02-307

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Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to BellSouth's joint application for authorization to provide in-region, interLATA services in Florida and Tennessee.

INTRODUCTION AND SUMMARY

Having obtained approval in two Section 271 proceedings in rapid succession, BellSouth now has barged ahead and filed this application, literally before the ink had dried on the *Five-State 271 Order*. However, in both prior Commission approvals, the Commission expressed serious concerns about BellSouth's systems and operations. BellSouth in this application has neither sought to address those concerns nor shown that the cited problems have been resolved. Clearly, BellSouth has not and -- indeed, given the few short hours between the issuance of the *Five-State 271 Order* and the filing of this application -- could not address those areas in which the Commission directed BellSouth to make improvements. Instead, BellSouth has ignored the Commission's concerns in the hope that its substandard performance will once again be given a pass. For BellSouth, it's full speed ahead -- without regard to the Commission's concerns.

The Commission must apply the brakes and require BellSouth to make the improvements that the Commission has sought in its two prior orders before it approves this application. The

Commission found in the *Five-State 271 Order* that BellSouth's performance has not improved in several areas, stating, for example, "that many of the same problems with BellSouth's adherence to the change management process that we noted in the [*Georgia/Louisiana 271 Order*] still exist." *Five-State 271 Order,* ¶ 178; *see also id.* ¶ 196 (backlogged CLEC change requests were "not a trend we wish to see continue.") Moreover, as noted in these comments, in various areas, BellSouth is now engaging in new discriminatory practices that injure competitive local exchange carriers ("CLECs") and increase their cost of doing business. Given this harm to competition, the Commission cannot simply approve BellSouth's application, but should require resolution of these problems by BellSouth before granting Section 271 approval.

These anticompetitive developments should be of particular concern to the Commission in this application for Florida and Tennessee. Local competition has not irreversibly taken root in Florida or Tennessee, and BellSouth retains monopoly control of the residential local exchange market in each state. In Tennessee, for example, facilities-based CLECs have 0.3% of residential lines, and UNE-P CLECs have 0.5% of residential lines. It is therefore crucial to consumer welfare that this Commission ensure that BellSouth make all of the changes and improvements needed to allow the development of meaningful and enduring local competition. The Commission should insist that BellSouth demonstrate full compliance with all of its checklist and market-opening obligations before granting BellSouth interLATA authorization for Florida and Tennessee.

Part I describes the continuing problems with BellSouth's change management process. The Commission has stated that BellSouth must improve its change management process, but BellSouth fails to devote the necessary resources and simply is not committed to the effort. As a result, CLEC OSS change requests are not implemented on a timely basis – often taking between two and three years to be implemented. BellSouth also does not regard the change control process as a collaborative effort with CLECs and instead makes unilateral decisions that are then presented to CLECs as a *fait accompli*. BellSouth fails to follow the change control process for its own projects and does not provide sizing information needed by CLECs to assist with change control planning. Finally, BellSouth software releases continue to be plagued by defects that increase CLEC costs and undercut CLECs' ability to compete. This problem is compounded by BellSouth's failure to correct the software defects in a timely manner.

Part II explains that BellSouth has failed to demonstrate that its data are accurate and show checklist compliance. BellSouth's ill-conceived reposting policy — which permits it to cloak in secrecy errors in its reported results — precludes a finding that its data are accurate. Even assuming *arguendo* that BellSouth's data are accurate — which is plainly unwarranted — its own reported results are riddled with examples of performance failures. To make matters worse, BellSouth has refused, in some instances, to conduct any root cause analyses to investigate the reasons for its performance failures.

Part III addresses anticompetitive policies recently adopted by BellSouth and not considered by this Commission in prior BellSouth applications that violate BellSouth's obligations to fully implement the competitive checklist and hinder AT&T's ability to compete. First, BellSouth is refusing to port numbers for large business clients unless AT&T resolves business issues relating to the disposition of BellSouth's facilities. This policy inappropriately seeks to shift responsibility for BellSouth retail issues onto AT&T that are properly the responsibility of BellSouth, disrupts AT&T's ability to compete for and retain new customers, and precludes any finding that BellSouth has fully implemented its obligation to provide access to local number portability in accordance with the Act and this Commission's rules.

Second, BellSouth is effectively precluding CLECs from converting special access DS-1 circuits to TELRIC-priced unbundled loops. BellSouth forces CLECs to choose between either running the risks of a service outage by pursuing a wholly unnecessary "disconnect/reconnect" order process, or else paying a non-cost-based, competition-defeating charge of $865 per conversion. These conditions deny CLECs nondiscriminatory access to unbundled loops.

Third, BellSouth has now arbitrarily reclassified certain requests for maintenance and repair of an unbundled loop as a provisioning order, thereby prolonging the time it takes to restore a customer's service and imposing exorbitant, non-cost-based charges on a CLEC seeking to expedite the repair. When AT&T leases a loop and encounters a problem on its side of the connecting facility assignment ("CFA"), AT&T can change its pair but must have a corresponding change on BellSouth's side of the frame. In these situations, BellSouth is treating AT&T's request as a provisioning order, with a five to seven business day standard interval, and not as a maintenance order with a one-day interval – and then charging AT&T an extraordinary $200 per day per line/circuit fee to expedite the order. As a consequence, unless AT&T pays BellSouth's unwarranted expedition fee, AT&T's customer is forced to suffer prolonged service quality problems, or even an outage, for a period of five to seven business days. BellSouth is thus exploiting its monopoly control over crucial network elements to preclude AT&T from being able to provide minimally adequate service to its customers.

Part IV explains that BellSouth has not fully implemented its obligation to set cost-based, nondiscriminatory rates. BellSouth's recurring rates are overstated as a result of BellSouth's double counting for inflation in its UNE cost calculations. BellSouth includes inflation in its cost of capital, but then also impermissibly uses current asset values that also include an inflation adjustment. Either method is an appropriate way to account for inflation, but not both. The result is rates that are inconsistent with TELRIC principles and that are overstated by 2% to 9%.

With respect to non-recurring rates, BellSouth is charging an inflated rate of $160 for a hot cut to transfer a loop from BellSouth to AT&T facilities collocated at a BellSouth central office. This rate effectively precludes AT&T from converting small and medium business customers from UNE-P service to AT&T's facilities-based UNE-L service. The $160 charge is dramatically higher than the hot cut charge imposed by other ILECs and cannot be justified under TELRIC principles.

In addition, as noted above, BellSouth has recently begun imposing a charge of $200 per day per line or circuit to expedite orders. BellSouth has presented no cost justification for this $200 figure, which is merely an arbitrary figure designed to drive up its rivals' costs and preclude effective competition. This expedition charge can amount to $10,000 to expedite a 10-line order by five days. This is nothing more than BellSouth using its monopoly to impermissibly increase its competitors' costs.

Part V explains why BellSouth's recent conduct precludes this Commission from finding that BellSouth will comply with its Section 272 obligations. BellSouth has now filed growth tariffs for switched access with this Commission and in all nine of its states that are designed and will operate to favor BellSouth Long Distance, Inc. ("BSLD"), BellSouth's long distance affiliate, at the expense of existing, large IXCs. BellSouth's new tariffs are designed so that small but rapidly growing long distance carriers (e.g., BSLD) receive what BellSouth misleadingly calls "volume" discounts on switched access that are unavailable to carriers, such as AT&T, that have far higher volumes, but that are unable to achieve growth rates sufficient to qualify for the discount. The North Carolina Utilities Commission has cancelled BellSouth's growth tariff, finding it to be "biased" and "against the public interest,"[1] and this Commission has previously and correctly held that such tariffs are discriminatory and impermissible. BellSouth's deliberate effort to favor its affiliate by filing growth tariffs that masquerade as volume discount plans is wholly incompatible with its promises to comply with Section 272, and is an independent and fully sufficient basis on which to deny the joint application.

If local competition is ever to emerge as an irreversible and meaningful constraint on BellSouth's local monopoly, it will be only because this Commission has insisted that BellSouth fully meet its market-opening obligations. BellSouth is capable of providing – and under the Act is required to provide – CLECs with far better performance and prices. The Commission's approval of BellSouth's previous application has not spurred BellSouth to make the progress the Commission expected and on which it should now insist. Accordingly, the Commission should deny this application.

I. BELLSOUTH'S CHANGE CONTROL PROCESS IS FLAWED AND DOES NOT COMPLY WITH BELLSOUTH'S OBLIGATION TO PROVIDE NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS.

Because "access to OSS functions falls squarely within an incumbent LEC's duty under section 251(c)(3) to provide unbundled network elements under terms and conditions that are nondiscriminatory and just and reasonable, and its duty under section 251(c)(4) to offer resale services without imposing any limitations or conditions that are discriminatory or unreasonable," a BOC seeking section 271 authority must demonstrate that it provides nondiscriminatory access to OSS. *New York 271 Order* ¶ 84 & n.203. The importance of this requirement cannot be

[1] Order Disapproving Proposed Tariff, In the Matter of Complaint for Anticompetitive Activity and Motion to Find Tariff Noncompliant or Suspend Tariff and Tariff Filing by BellSouth Telecommunications, Inc. to Establish Contract Rates for Switched Access Rate Elements, Docket No. P-55, Sub 1365 & 1366, N.C. Util. Comm. (filed Aug. 13, 2002).

overstated. "The Commission consistently has found that nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition," *id.* ¶ 83, and that OSS "represent a significant potential barrier to entry." *Local Competition Order* ¶ 516. Without nondiscriminatory access to the BOC's OSS, competing carriers "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the BOC's local exchange markets. *New York 271 Order* ¶ 83 ("new entrants must have access to the functions performed by the incumbent's OSS in order to formulate and place orders for network elements or resale services, to install service to their customers, to maintain and repair network facilities, and to bill customers").

BellSouth claims that the findings of the two prior Section 271 approvals that it provided nondiscriminatory access to its OSS "is equally applicable to the Application" because the same OSS are used throughout its service territory. Br. at 39. BellSouth is incorrect. In its order approving BellSouth's five-state application, the Commission noted that although it found the CCP to be adequate on the basis of the record in that proceeding, "[w]e recognize . . . that as a general matter, section 271 requirements are constantly evolving, so that what is sufficient for checklist compliance today may not be sufficient over time." *Five-State 271 Order*, ¶ 179. Furthermore, if the Commission found the CCP to be adequate solely on the basis of prior decisions, BellSouth would have no incentive to improve its CCP as the Commission's previous orders obviously expected – but which, as described below, BellSouth is far from fulfilling.

In both the Georgia*/Louisiana 271 Order* and the *Five-State 271 Order,* the Commission stated, notwithstanding its approval of BellSouth's applications, that it continued to be concerned about the adequacy of the CCP – and expected BellSouth to improve it. This concern was first highlighted in the *Georgia/Louisiana 271 Order*:

> While we find BellSouth's performance to be adequate, we note that it is important that BellSouth continue to work collaboratively with competitive LECs through the Change Control Process on prioritization issues, provide competitive CLECS with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes, and implement changes in a timely manner. Should any problems in this regard develop such that the requirements of section 271 are no longer met, we are prepared to take appropriate enforcement action.

Georgia/Louisiana 271 Order, ¶ 193.

In the *Five-State 271 Order*, the Commission again expressed concern that "many of the same problems with BellSouth's adherence to its change management process that we noted in the [*Georgia/Louisiana 271 Order*] still exist." *Five-State 271 Order*, ¶ 178.[2] Indeed, the Commission based its approval in the *Five-State 271 Order* in part on BellSouth's "future commitments to its change management process and performance." *Id.*, ¶ 179. Moreover, the Commission made clear that it was "essential" for BellSouth to "follow through on its commitment to improve its change management process and adherence, . . . continue to work collaboratively with competitive LECs through the CCP on prioritization issues, provide CLECs with sufficient information to be able to make informed decisions regarding prioritization of proposed systems changes, and implement changes in a timely manner." *Id*.

Notwithstanding this admonition by the Commission, BellSouth has not improved its change management process. As described in more detail in the Declaration of Jay Bradbury, BellSouth still fails to devote sufficient resources to the change management process program; without such resources, the process breaks down, and CLECs pay the price. CLECs still wait two to three years before BellSouth implements change control requests, and collaboration is a

[2] For example, the Commission stated that it was "concerned by the length of time that some competitive LECs have been waiting for their change request to be implemented. . . . Although we do not find the current level of backlogged change requests causes BellSouth to fail this checklist item, *it is not a trend we wish to see continue.*" *Id.*, ¶ 196 (emphasis added).

myth. BellSouth still controls the change management process and makes unilateral changes that favor its operational needs and delay CLEC OSS projects. The 2003 Release Plan dramatically illustrates these ongoing problems with BellSouth's change management system. When BellSouth does make changes in its OSS, its software releases have significant errors that force CLECs to expend time, effort, and expense that should have been avoidable if BellSouth had adequately tested the software.

A. BellSouth's Change Control Process Discriminates Against CLECs.

In its application, BellSouth touts its 2003 Release Plan and action plan for implementing the 60-week implementation interval mandated by the Florida PSC as evidence of the success of its CCP. Stacy Aff, ¶¶ 224-47. Contrary to BellSouth's claims, however, the 2003 Release Plan and action plan illustrate the ongoing problems with BellSouth's change control process: lack of BellSouth resources, BellSouth's unilateral control of the process, and BellSouth's failure to coordinate with CLEC. The result is that CLEC change requests are not implemented on a timely basis. Bradbury Dec., ¶¶ 22-40.

On this issue of timely implementation, the *Five-State 271 Order* was clear in directing BellSouth to improve its performance:

> [W]e expect BellSouth to follow through on its commitments to improve the efficiency of its change management process. We note that there are significantly fewer BellSouth-initiated change requests than competitive LEC-initiated requests. As allowed by the 50/50 plan in the CCP, BellSouth could use some of its half of the release capacity to implement some of the more highly prioritized or older competitive LEC requests during the course of the next year. If BellSouth continues to evidence an inability to reduce its backlog of change requests, we will consider this issue in the context of a section 271(d)(6) enforcement action. Therefore, we will monitor BellSouth's performance, and we expect and encourage BellSouth to continue to devote adequate resources to this issue.

Five-State 271 Order, ¶196.

Notwithstanding the Commission's expectations, no progress is being made in reducing the backlog of change requests, and CLECs continue to wait two to three years to have their change requests implemented. The 2003 Release Plan does nothing to reduce implementation time for CLEC change requests. Indeed, in Release 13.0, currently scheduled for implementation on June 8, 2003, 7 of the 16 requests, or just under half, were submitted in 2000. Bradbury Dec., ¶¶26-40.

Rather than focusing on improving its performance, BellSouth puts its effort into ensuring that it will not have to pay penalties for its inadequate implementation of CLEC change requests. In response to the Florida PSC's 60-week implementation performance metric, BellSouth has filed its action plan in which it argues that it should not be required to pay penalties for failure to meet its implementation obligations.[3] BellSouth has also made clear that it will seek waiver of any penalty that is imposed. Bradbury Dec., ¶¶ 25, 42.

The 2003 Release Plan also demonstrates the consequences of BellSouth's lack of commitment to the change control process and lack of resources devoted to the program. Without the necessary resources, adequate planning is not possible, and implementation delays are the result. As an example, the migration from ENCORE to IDN, which is designed to provide significant benefits to CLECs as an OSS upgrade, was originally scheduled for

[3] BellSouth also overstates the requirements of the Florida PSC's order. The order does not require implementation of all existing change requests within 60 weeks of prioritization and does not apply to a number of current change requests. The 60-week period, for penalty purposes, applies only to those change requests that were, or will be, prioritized on or after September 25, 2002 – not to change requests that have already been prioritized – and begins running only from the date of prioritization. Bradbury Dec., ¶ 24.

implementation in March 2003. As a result of planning problems on BellSouth's end, implementation has now moved to 2004. Bradbury Dec., ¶¶ 30-31.[4]

The CCP suffers from other planning errors as well. In connection with the implementation of the EDI Pre-Ordering interface, BellSouth originally sized that project at 21 units of effort in May 2002. That estimate applied until the end of August, at which time BellSouth discovered that it had underestimated the project by a factor of *five* and determined that the project required 100 units of effort. Proper planning is impossible when such errors occur. Bradbury Dec., ¶ 29.

BellSouth also fails to coordinate its change control activities with CLECs. In June 2002, BellSouth unilaterally developed a set of alternative plans regarding an Industry Standard release in 2003. In developing these alternatives, BellSouth had already set aside two releases for its own projects without discussing such actions with CLECs. Such action is clearly inconsistent with the collaboration requirements of the CCP. Bradbury Dec., ¶¶ 26-27.

BellSouth also cites the 2003 Release Plan and the various options given to CLECs as examples of collaboration. In fact, BellSouth developed the various options unilaterally and presented the two options to the CLECs as a fait accompli, and then directed the CLECs to choose between the BellSouth-generated options.[5] Bradbury Dec., ¶¶ 26-27. That is not collaboration.

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[4] BellSouth cites the March 2003 implementation of the EDI Pre-Ordering interface as evidence that its change control process is improving. In fact, this March 2003 implementation became possible only after BellSouth "botched" the implementation of two significant OSS change requests that it had originally planned to implement at that time. Bradbury Dec., ¶¶ 31-32.

[5] Indeed, BellSouth advised the CLECs that it would decrease the capacity of its 2003 release for each day the CLECs delayed their decision on BellSouth's alternatives. Bradbury Dec., ¶ 26.

BellSouth has also failed to provide information to CLECs on BellSouth CCP projects. For example, BellSouth has never even filed a change request for its TAG XML conversion or the proposed ENCORE-IDN migration, much less provide sizing information on those projects to CLECs. Bradbury Dec., ¶ 27. There is no collaboration when all the effort and energy comes from the CLEC side.

B. BellSouth's Software Releases Contain Serious Flaws that Impair CLECs.

BellSouth's software releases continue to be plagued by errors. In its application, BellSouth claims that its "performance in minimizing the number of defects back in its software releases continues to be strong." Br. at 57. This is laughable. BellSouth's software releases contain serious flaws that force CLEC to incur significant costs and divert CLEC resources from productive activities. Bradbury Dec., ¶¶ 45-46. In the Five-State proceeding, both the Commission and DOJ took note of the problems with BellSouth's software releases.[6] In discussing improvements to the process, the *Five-State 271 Order* noted with approval that BellSouth had established new metrics to measure the interval for defect repairs. *Five-State 271 Order*, ¶ 201.

Evidence presented by BellSouth in its application confirms the continuing high level of errors in BellSouth software releases. Over the years, BellSouth software releases have contained between four and nine defects for every feature implemented. In Release 10.5,

[6] *Five-State 271 Order*, ¶ 200 ("we share the concern expressed by the Department of Justice and the competitive LECs regarding the number of defects in BellSouth's releases)." *See* Five-State DOJ Eval. at 12 (noting that "[t]he Commission should carefully monitor BellSouth's future releases.").

BellSouth implemented 11 features that contained a total of 94 defects, a ratio of 8.55. Bradbury Dec. ¶¶ 60-64. No one can call such performance "strong."[7]

In addition, BellSouth is not close to meeting the defect repair intervals required by performance metrics and cited approvingly by the Commission. BellSouth's own Daily Change Request Activity Report demonstrates BellSouth's poor performance in correcting the errors that occur. Indeed, BellSouth is currently planning to correct 20 defects validated or updated in September at intervals up to four times greater than the metric objective. Additionally, BellSouth knowingly plans to correct more recently identified low impact defects significantly in advance of medium impact defects validated earlier. Bradbury Dec., ¶¶ 46-50. The haphazard defect correction process does not meet CLEC needs or the requirements and expectations of the Commission.

BellSouth seeks to mask its high rate of defects in software releases by its reliance on a third-party report by Q/P Management Group, Stacy Aff. ¶¶ 248-51 & Exh. WNS-56. This report, however, is riddled with methodological errors and cannot be used to support the quality of BellSouth's software releases. The report's fundamental problem is its failure to determine the number of defective function points in each of the releases studied. Instead, it identified defects without determining the impact of those defects on software users. The report also converted line counts using unverified data and relied on only 30 days of Release 10.5 data

[7] BellSouth argues that its performance on Release 10.6 is better, *see* Stacy Aff. ¶¶ 256-59, but this claim is undercut by BellSouth's use of inconsistent measures and its reliance on a 30-day study period rather than the industry standard 90 days. Bradbury Dec., ¶ 64.

rather than 90 days. Given these significant errors, the Q/P report is basically useless. Bradbury Dec., ¶¶ 51-59, 64.[8]

These issues illustrate the serious ongoing problems with BellSouth's CCP. BellSouth cites the progress that has been made, but any progress was largely the result of regulatory bodies imposing requirements in the face of strong BellSouth opposition.[9] BellSouth is simply not committed to the change control process, and its actions show it. There must be a commitment by BellSouth to the change control process before BellSouth can be found to comply with its obligations to provide nondiscriminatory access to OSS.

II. BELLSOUTH'S PERFORMANCE DATA DO NOT SHOW CHECKLIST COMPLIANCE.

There is no sound basis for BellSouth's claims that its performance data are accurate and reliable and show checklist compliance. Because BellSouth's reposting policy substantially limits the circumstances under which it discloses errors in its reported results, BellSouth's actual performance remains shrouded in secrecy. Even assuming *arguendo* that BellSouth's data are accurate, BellSouth's own commercial data reveal numerous performance failures in a number of areas. Worse yet, BellSouth has been unwilling, in some instances, to conduct root cause analyses to determine the reasons for these performance failures or implement a performance improvement plan. Against this backdrop, BellSouth cannot

[8] In trying to explain its poor performance, BellSouth plays "blame the victim." In its implementation of Release 10.6, BellSouth sought to justify the defective implementation of CR 0756 (UNE-P Calling Scope). None of its explanations has any merit. Bradbury Dec., ¶¶ 66-71.

[9] An example is the Georgia Performance Measures Six Month Review, Docket No. 7892-U. Sept. 17, 2002 in which the Georgia PSC adopted its Staff Recommendation to require significant changes to the CCP that BellSouth had refused to implement during collaborative meetings. Bradbury Dec., ¶¶ 19-20.

legitimately contend that its performance data are reliable and demonstrate that it has fulfilled its statutory obligations.

A. BellSouth's Reposting Policy Belies BellSouth's Claims of Data Accuracy.

BellSouth's reposting policy precludes a finding that its data are accurate, reliable and "above suspicion."[10] In this regard, BellSouth's reposting policy substantially restricts the conditions under which it will restate its data to correct errors in its reported results. Norris Dec., ¶¶ 6-10. Pursuant to this policy, BellSouth will restate data only for so-called "key" metrics (1) when there is "a shift in the performance in the aggregate from an 'in parity' condition to an out of parity condition;" or (2) when performance failures for benchmark metrics are equal to or greater than a "2% deviation in performance at the sub-metric level provided that there are at least 100 CLEC transactions in the sub-metric;" or (3) when parity measures which are out of parity, have a ".5 change in the z-score at the sub-metric level, provided that there are at least 100 CLEC transactions in the sub-metric."[11] Additionally, BellSouth will not repost data that are more than "three months in arrears." *Id.*

By virtue of this policy, BellSouth can effectively conceal *all* errors in its data for hundreds of measures that are not classified as "key" measures, as well as data for "key" measures that do not otherwise qualify for restatement under this policy. There is no rational basis upon which BellSouth should be permitted to conceal such inaccuracies in its reported data. Norris Dec., ¶¶ 6-10.

Because BellSouth is relying on its self-reported data to establish that it has fully satisfied its Section 271 obligations, it bears the burden of proving that its performance data are

[10] Texas 271 Order, ¶ 429.

[11] Varner Reply Aff., PM-13 (WC Docket No-02-150) (footnote omitted).

accurate.[12] It has not met and cannot meet this burden. For purposes of its application and with few exceptions, BellSouth is relying on all data for all measures in its reported results. As a consequence, the nature and frequency of errors in BellSouth's reported results are critical to an assessment of checklist compliance. BellSouth's failure to repost all errors in its data for all measures included in its application renders it impossible for this Commission, state regulatory bodies, and the CLECs to conduct a comprehensive analysis of the reliability and stability of BellSouth's touted performance monitoring and reporting processes. *Id.*, ¶ 10.

Stated simply, BellSouth cannot have it both ways. BellSouth cannot seriously contend that its data are accurate, while simultaneously shielding from public disclosure inaccuracies in its reported results. Furthermore, the mere fact that BellSouth is required to pay penalties for inaccuracies in its performance results highlights the fallacy of any notion that it can legitimately conceal such errors in its reports. *Id.,* ¶¶ 8-9. BellSouth should be required to divulge all errors in its reported results. Because BellSouth has failed to do so, it cannot reasonably assert, on the basis of this record, that it has demonstrated the accuracy and reliability of its data.

B. BellSouth's Data Do Not Show Checklist Compliance.

Even assuming *arguendo* that BellSouth's data are accurate — and they are not — BellSouth's own reported results are littered with examples of substandard performance. BellSouth's commercial data show, *inter alia*, that it fails to issue timely status notices to CLECs, and that it has failed to perform at parity during the provisioning and maintenance and repair processes. *Id.*, ¶¶ 11-25.

[12] *South Carolina 271 Order*, ¶ 37 ("the BOC applicant retains at all times the ultimate burden of proof that its application is sufficient") (footnote omitted).

Thus, for example, in Florida, BellSouth has failed repeatedly to meet the benchmark standard for the timely return of partially-mechanized FOCs for AT&T's UNE-P. *Id.*, ¶ 54. Furthermore, BellSouth's aggregate CLEC data contain numerous other examples of BellSouth's failure to comply with parity and benchmark standards. *Id.*, ¶¶ 11-25.

To make matters worse, BellSouth has, in some instances, refused AT&T's requests to conduct root cause analyses to investigate the reasons for its performance failures or implement performance improvement plans. *Id.,* ¶¶ 71-72. As a consequence, no solace can be taken that BellSouth's current level of performance will improve. In any event, on the basis of the current record, BellSouth has not met its burden of proving that its data are trustworthy, and that those data show present statutory compliance.

III. BELLSOUTH ENGAGES IN ANTI-COMPETITIVE CONDUCT DESIGNED TO IMPOSE COMPETITIVE BARRIERS AND COSTS ON AT&T AND OTHER CLECS

In recent months, BellSouth has launched a series of policies and procedures seeking to raise competitive barriers that make it more difficult for AT&T and other CLECs to win and retain customers. These policies increase AT&T and CLEC costs and interfere with relations with customers. As such, they violate Section 271.

A. BellSouth Has Not Satisfied Checklist Item Eleven (Local Number Portability).

BellSouth has not satisfied checklist item eleven, local number portability, because it refuses to port certain numbers for larger businesses until AT&T has resolved issues concerning *BellSouth's* relationship with the customer. *See* 47 U.S.C. § 271(c)(2)(B)(xi). BellSouth's policy leads to unnecessary delays that impede AT&T's ability to serve the customer by improperly shifting responsibility to AT&T to resolve issues that are rightfully BellSouth's to resolve.

Section 271(c)(2)(B)(ii) requires BellSouth to demonstrate that it is complying with the number portability regulations of the FCC under Section 251 of the Act. 47 U.S.C. § 271(c)(2)(B)(xi). Moreover, Congress has defined number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications service to another." 47 U.S.C. § 153(30). BellSouth's policy does not meet these standards.

As explained in the Declaration of Denise Berger, BellSouth's services for larger businesses generally require a high capacity access facility to carry the service from the customer's PBX to the BellSouth central office. Berger Dec., ¶ 4. If AT&T wins the customer's local service, AT&T asks BellSouth to port all of the numbers on that facility from BellSouth to AT&T. BellSouth will not process AT&T's order, however; instead, it returns the order for "clarification" regarding the disposition of the BellSouth retail access facility. In other words, BellSouth refuses to port the numbers until AT&T tells BellSouth what to do with *BellSouth's* facility.

BellSouth's position is unlawful for two reasons. First, porting the numbers has nothing to do with the disposition of BellSouth's facility. AT&T is not taking BellSouth's facility, and BellSouth does not need this information to port the numbers. Refusing to port the number until AT&T provides "clarification" on the disposition of the BellSouth facility is an unnecessary impediment that simply delays AT&T's order and AT&T's ability to provide service to the customer. Berger Dec., ¶ 6.

Second, BellSouth's "clarification" policy inappropriately forces AT&T to insert itself into a matter between its new customer and BellSouth's retail unit. BellSouth's practice, by design, puts the onus on AT&T to resolve and wind down the customer's relationship with BellSouth. This is particularly problematic when the customer has no use for the BellSouth facility; if it is not disconnected, then BellSouth often continues to bill the customer, which creates customer dissatisfaction with AT&T. As Ms. Berger notes, under BellSouth's policy, BellSouth can tell the customer that the billing problem is AT&T's responsibility, thereby sowing discord between AT&T and its new customer. Berger Dec., ¶ 7.

In short, BellSouth does not provide the "quality, reliability, and convenience" required by statute when it ports numbers for high capacity lines that serve businesses. BellSouth has no legitimate justification for holding local number portability hostage while AT&T resolves an issue that is properly BellSouth's to resolve. Accordingly, BellSouth has not satisfied checklist item eleven.

B. BellSouth Does Not Provide Nondiscriminatory Access To Unbundled Loops (Checklist Item 2 and 4).

BellSouth fails to satisfy checklist items two and four, as they relate to unbundled loops, in two respects. First, BellSouth does not provide a workable process for converting DS1 special access circuits to unbundled loops. Second, BellSouth provides discriminatory access to unbundled loops by treating loop outages as a provisioning issue, rather than as a maintenance issue.

1. DS1 Special Access Circuits

BellSouth does not provide a reasonable and cost-based method of converting special access DS1 circuits to TELRIC-priced unbundled loops.[13] BellSouth's conversion process requires AT&T to issue both a disconnect order for the access DS1 and a new connect order for

[13] BellSouth does not dispute AT&T's right to convert the special access circuit to an unbundled loop, only the process of conversion.

the UNE loop. These requirements are unreasonable, because disconnecting and reconnecting the loop risks serious disruption of the customer's service. Indeed, many customers are unwilling to run such a risk. Berger Dec., ¶ 12. Moreover, as the Commission has recognized (*Supplemental Order Clarification* ¶ 30), BellSouth can accomplish the conversion from an engineering standpoint without physically disconnecting and reconnecting the loop. *Id.*

Although AT&T has asked BellSouth to modify its conversion process to make it workable, BellSouth's only response has been to propose a single-order alternative that would cost an average of $865 per circuit per conversion. Berger Dec., ¶ 13. BellSouth has also refused to provide cost studies to support its claim that such a conversion should cost $865, on the grounds that its proposed rate is a "market-based" rate. *Id.*

BellSouth's position effectively precludes access to unbundled DS1 loops in such situations. AT&T is faced with the Hobson's choice of (1) pursuing the disconnect-and-reconnect option, which needlessly risks serious service disruption, (2) paying an exorbitant fee to eliminate that risk, or (3) remaining on BellSouth's enormously overpriced special access circuit. Because BellSouth's conversion processes are unreasonable, BellSouth has ensured that AT&T will continue to purchase BellSouth's overpriced access circuits. BellSouth has therefore failed to satisfy checklist items two and four.

2. Loop Maintenance

BellSouth has also failed to satisfy checklist items two and four because it requires AT&T to treat certain maintenance requests as provisioning requests, which needlessly and anti-competitively imposes substantial costs and delays on AT&T and adversely affects AT&T's customer service. To provide competitive service with its own switch, AT&T leases a local loop from BellSouth, and the connectivity between AT&T and BellSouth is established through the connection of cable pairs in AT&T's collocation cage. If an AT&T end-user's service malfunctions and the problem is on the AT&T side of the CFA, AT&T can quickly change the pair to restore the customer's service. AT&T cannot restore the customer's service by itself, however; BellSouth must also change the pair on its side of the connection to match AT&T's new pair. Berger Dec., ¶ 16.

In this situation, BellSouth requires AT&T to send a loop *provisioning* order to BellSouth in order to accomplish this change in pairs on BellSouth's side of the CFA. This is unreasonable and serves only to create needless costs and delays. This should be treated as a maintenance order, which would require BellSouth to resolve the problem within 24 hours. By contrast, the standard interval for a provisioning order is five to seven business days, and the provisioning charges are substantially higher than BellSouth's maintenance charges. Berger Dec., ¶ 18. Indeed, when the problem originates on *BellSouth's* side of the CFA (instead of AT&T's), BellSouth treats the problem as a maintenance issue and the 24-hour interval applies.

Equally important, BellSouth's policy necessarily results in the AT&T customer being without service for several days. No customer wants to wait five to seven business days for BellSouth to perform the maintenance tasks necessary to restore service. Berger Dec., ¶ 19. Although BellSouth has indicated that AT&T can expedite the order, BellSouth charges $200 per day per line/circuit to expedite provisioning orders (and most orders have multiple lines or circuits).

BellSouth's policy is unlawful. AT&T cannot restore the service on its own; BellSouth must change the pair on its side of the connection. There is no justification for treating this as a provisioning issue rather than as a maintenance issue, and therefore BellSouth has not satisfied checklist items two and four.

IV. BELLSOUTH'S RECURRING AND NON-RECURRING RATES DO NOT SATISFY CHECKLIST ITEM TWO.

The Commission should deny the joint application for yet another reason. BellSouth has failed to demonstrate that it has fully implemented its obligation to set cost-based recurring and non-recurring rates that are consistent with the Commission's TELRIC methodology.

A. BellSouth's Double-Counting of Inflation Overstates Florida's UNE Rates.

The rates approved by the Florida PSC are based on cost calculations that impermissibly double count inflation in violation of TELRIC principles. BellSouth has included a provision for inflation in the cost of capital and also used current asset values that include an inflation factor. As set forth in the Declaration of John C. Klick and Brian F. Pitkin, either method is an acceptable measure of accounting for inflation in a forward-looking cost study under TELRIC, but both methods may not be used in the same study.

In the Florida UNE rate proceeding, BellSouth included in its cost study a nominal cost of capital that includes an inflation factor and used the current value of assets instead of the historical cost investment base. Klick/Pitkin Dec., ¶ 4. In addition, for engineering costs, BellSouth used a loading factor that had the effect of triple counting inflation. AT&T objected to BellSouth's approach, arguing that it would double count inflation and lead to a cost overrecovery. *Id*. ¶ 3 & n.1. The Florida PSC rejected AT&T's argument and allowed BellSouth to use both the nominal cost of capital and the current asset values. *Id*.

Allowing the use of the nominal cost of capital (which includes inflation) and the use of current asset values (rather than historical asset values) violates TELRIC principles in allowing the overrecovery of costs. Klick/Pitkin Dec., ¶¶ 4-14. Economics articles addressing this issue conclude that use of either the nominal cost of capital with historical asset values or the real cost of capital (which excludes inflation) with current asset values appropriately compensates investors.[14] The Railway Accounting Principles Board ("RAPB"), established by Congress to develop a body of cost accounting principles to serve as the framework for implementing the regulatory provision in which cost determination plays a vital role, reached the same conclusion in its Final Report to Congress on appropriate cost methodology issues. *Id.* ¶¶ 5-7.

Given these principles, BellSouth's costs have been overstated by its use of the nominal cost of capital and current asset values. Klick/Pitkin Dec., ¶¶ 8-13. Given the rate of inflation used and the three year planning horizon at issue in the UNE rate proceeding, the overstatement of rates ranges from 2% to over 9%. *Id.* ¶¶ 14-15. BellSouth cannot be found in compliance with checklist item two unless it adjusts its rates to eliminate the cost overrecovery.

B. BellSouth's Hot Cut Charges Are Vastly Overstated And Foreclose UNE-Loop Entry For Small And Medium Sized Business In Florida.

AT&T's plan for serving the small and medium sized business in Florida includes the use of AT&T's own facilities collocated in BellSouth's central offices, purchasing only the unbundled loop ("UNE-L") from BellSouth. *See* King Dec. ¶¶ 5-6. Although AT&T is currently serving the small and medium sized business market using UNE-P service, it is important to AT&T's business plan to be able to switch these customers to UNE-L service.

In converting a customer to UNE-L service, it is necessary to physically disconnect the loop from BellSouth's switching equipment and reconnect that loop to the AT&T's switching equipment collocated in BellSouth's central office. *See* King Dec. ¶ 7. This process is called a "hot cut." *Id.*

[14] Myers, Kolbe & Tye, Inflation and Rate of Return Regulation, 2 Research in Transportation Economics 83 (1985); Myers, Kolbe & Tye, Regulation and Capital Formation in the Oil Pipeline Industry, Transportation Journal 25 (Summer 1984) (Attachments 1 and 2 to Klick/Pitkin Dec.).

BellSouth charges AT&T and other CLECs $160 to perform a hot cut, and $82.47 for each additional hot cut in the same order. BellSouth's Florida hot cut non-recurring charge ("NRC") of $160 is not even remotely close to being TELRIC-compliant. At the Florida UNE rate proceeding, AT&T submitted testimony showing that BellSouth's NRC cost study on which the hot cut rate was based significantly overstated BellSouth's costs by including costs that are not appropriate or necessary in a forward-looking network, overstating time estimates for the completion of work activities, and including costs for procedures that would be automated in a forward-looking network. King Dec., ¶¶ 9-11. Correcting for those errors, AT&T proposed elements of the hot cut rate that totaled $22.63 for the first loop and $12.34 for each subsequent loop in the same order. *Id.*

In failing to adopt AT&T's proposed rate, the Florida PSC failed to follow established TELRIC principles. The manual activity required by BellSouth to complete a hot cut is minimal, and the time needed to complete the hot cut process is short. These basic facts make it clear that BellSouth's $160 rate constitutes an outrageous overcharge. Comparisons with hot cut charges of other BOCs demonstrate that BellSouth Florida's rate is clearly excessive (King Dec.,¶ 12*)*:

¶ Table 1. Comparison of Hot Cut Rates in States

STATE	First Hot in Order	Additional Hot Cuts in Same Order
Florida (BellSouth)	$160.29	$82.47
Florida (Verizon)	$75.48	$17.74
New York	$35.00	$35.00
Pennsylvania	$4.34	$3.28
Texas	$25.74 (standard time; no overtime)	$25.74 (standard time; no overtime)
California (PacBell)	$29.93	$3.24

BellSouth's massively inflated hot cut NRCs present more than a hypothetical costing issue. BellSouth's overstated hot cut NRCs threaten any facilities-based local business entry plans in Florida. As noted above, AT&T planned to provide small and medium sized business services in Florida using its own facilities collocated in BellSouth central offices, purchasing only the loop from BellSouth. That service is in jeopardy so long as BellSouth is free to impose a $160 charge for a hot cut. AT&T cannot hope to attract business customers if it is required to pass on BellSouth's exorbitant hot cut charge. Nor can AT&T afford to absorb this NRC. AT&T's internal analysis shows that, based on BellSouth's Florida hot cut NRC, the time it would take AT&T to recover its up-front costs and investment would be extended beyond its expected customer retention period. *See* King Dec. ¶ 13.

C. BellSouth's Charge of $200 Per Day Per Line/Circuit to Expedite Orders Violates TELRIC.

In Florida, BellSouth is unilaterally imposing a *$200 per day per line or circuit* charge for expedition of any order. This charge is not based on cost studies or other supporting documentation. Instead, it reflects BellSouth's apparent belief that it may impose what it calls a "market-based" charge for this service. This plainly violates the pricing requirements of the Act. King Dec., ¶ 14.

There is no basis for what BellSouth claims is a "market" charge on rivals who are dependent on BellSouth for service. Section 252(d) requires that rates and charges be nondiscriminatory and based on cost, and BellSouth's expedition charge satisfies neither of those requirements. This rate is not cost-based, and BellSouth has no evidence that it incurs costs approaching $200 per day per line to expedite an order. Moreover, there is no evidence that BellSouth incurs such cost for *each* line in a multi-line order, or that such costs would be incurred separately for each *day* an order is expedited. It is therefore not surprising that BellSouth refuses to provide supporting cost evidence to justify the charge. King Dec., ¶ 15.

The $200 per day per line charge is also discriminatory. BellSouth is imposing this charge as an arbitrary amount assessed against CLEC to obtain faster service. When BellSouth expedites an order for its customers, it incurs only its actual costs and does not incur a similar $200 per day per line charge for expedition. King Dec., ¶ 15.

At present, AT&T has little commercial choice when faced with a customer request that requires expedition. BellSouth is willing to expedite an order, but only if AT&T pays the $200 per day per line ransom. Earlier this month AT&T needed to expedite an unbundled loop order for 6 loops, and was notified that it would be charged $6000 by BellSouth for expediting the order from October 8 to October 3. King Dec., ¶ 16. And also as noted above, by redefining ordinary requests for maintenance or repair as "provisioning" orders, BellSouth is able to coerce its competitors into paying these unlawful expedition fees to avoid condemning their customers to multiple days of degraded service or loss of service. This conduct is blatantly anticompetitive. BellSouth is simply exploiting its control over the local network to delay its rivals' market entry, drive up their costs, and preclude them from offering a competitive service. BellSouth cannot be found to have fully implemented its obligations under checklist item 2 of Section 271 as long as it charges this totally outrageous rate.

V. BELLSOUTH HAS FAILED TO DEMONSTRATE THAT IT AND ITS SECTION 272 AFFILIATE WILL OPERATE IN ACCORDANCE WITH SECTION 272 IF GRANTED INTERLATA AUTHORITY.

"As a pre-condition to entry under section 271,"[15] BellSouth and its section 272 affiliate must present evidence, not "paper promises," that establishes they will comply "with the requirements of section 272." 47 U.S.C. § 271(d)(3)(B); *Michigan 271 Order* ¶ 55 (holding that "paper promises" cannot satisfy the BOC's burden under § 271). As the Commission has

[15] Non-Accounting Safeguards Third Order On Reconsideration ¶ 2.

frequently stressed, "compliance with section 272 is 'of crucial importance' because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field." *Texas 271 Order* ¶ 395 (quoting *Michigan 271 Order* ¶ 346).

Section 272(c)(1) "requires that a BOC in its dealings with its section 272 affiliate 'may not discriminate between that company or affiliate and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards.'" *Second Louisiana 271 Order* ¶ 341 (quoting § 272(c)(1)). Section 272(e)(3) further requires "that a BOC must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers." *Non-Accounting Safeguards Order* ¶ 257. BellSouth has not demonstrated compliance with these nondiscrimination requirements.

BellSouth contradicts its claims that it will comply with Section 272 by affirmatively seeking to establish throughout its region interstate and intrastate switched access tariffs that unlawfully discriminate in favor of its long-distance affiliate, BSLD, in violation of the non-discrimination requirements of Section 272. The BellSouth SWA Contract Tariff, which BellSouth submitted to the Commission and each state in its service territory, is structured to provide impermissible "growth" discounts that are designed to allow smaller IXCs such as BSLD to pay lower rates per minute-of-use than will larger, established carriers such as AT&T. As BellSouth has admitted in its state filings, these tariffs are designed to provide "discounts based upon positive incremental local switching usage,"[16] that is, discounts are based on growth in local switch usage. Such "growth" discounts have been explicitly prohibited by the

[16] Letter from C. D. Hatchcock, Regulatory & External Affairs Vice President, BellSouth Telecommunications, Inc. to N. Carpenter, Director, Communications Division, Public Staff, N.C. Utilities Comm., at 2 (May 23, 2002) ("Hatchcock Letter").

Commission as a violation of Section 272(c)(1) and 272(e)(3), because they plainly would discriminate in favor of a BOC's long-distance affiliate and against established IXCs, which are experiencing declines in access minutes, and will inevitably continue to experience further declines after a BOC's entry into long distance. The fact that BellSouth filed such clearly unlawful, discriminatory tariffs two days after receipt of Section 271 authority for Georgia and Louisiana precludes any finding that BellSouth has met its obligation to demonstrate that it will comply with Section 272 if granted interLATA authority.

A. Section 272(c)(1) Imposes An "Unqualified Prohibition" Against All Forms Of Discrimination By A BOC In Favor Of Its Affiliate.

Section 272(c)(1) imposes an "unqualified prohibition" against all forms of discrimination by a BOC in favor of its affiliate, and section 272(e)(3) "requires that a BOC must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers." *Non-Accounting Safeguards Order* ¶¶ 197, 257. As the Commission has stressed, "[T]he section 272(c)(1) nondiscrimination provision is designed to provide the BOC an incentive to provide efficient service to rivals of its section 272 affiliate, by requiring that potential competitors do not receive less favorable prices or terms, or less advantageous services from the BOC than its separate affiliate receives." *Non-Accounting Safeguards Order* ¶ 206.

One of the most direct and harmful ways a BOC can discriminate against IXCs and in favor of its section 272 affiliate is by offering its affiliate preferential rates. If a BOC is allowed to charge competitors higher prices for inputs than it charges its own 272 affiliate, the BOC could create a situation in which it "may allow the BOC affiliate to win customers even though a competing carrier may be a more efficient provider in serving the customer." *Non-Accounting Safeguards Order* ¶ 12. Pursuant to the "unqualified prohibition against discrimination" established by section 272(c)(1), *id*. ¶ 197, the Commission has mandated that "[a] BOC must provide to unaffiliated entities the same goods, services, facilities, and information that it provides to its section 272 affiliate at the same rates, terms, and conditions." *Id*. ¶ 202. The Commission specifically concluded that section 272(e)(3) expressly "require[s] the BOCs to charge nondiscriminatory prices" for telephone exchange service and exchange access, *id*. ¶ 258, and that "a BOC must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated interexchange carriers." *Id*. ¶ 257.

The Commission has given special attention to schemes by which a BOC may be able to establish rates that appear to be facially neutral, but in fact have an unlawful, discriminatory impact. In the *Non-Accounting Safeguards Order*, the Commission recognized that "a BOC may have an incentive to offer tariffs that, while available on a nondiscriminatory basis, are in fact tailored to its affiliate's specific size, expansion plans, or other needs." *Id*. ¶ 257. The Commission specifically noted that growth discounts, which offer reduced prices based on growth in local traffic, "create an artificial advantage for BOC long distance affiliates with no subscribers, relative to existing IXCs and other new entrants." *See Access Charge Reform NPRM* ¶ 134.

The Commission has also recognized that BOC affiliates, which "will begin with existing relationships with end users, name recognition, and no subscribers," will be able to "grow much more quickly than existing IXCs and other new entrants." *Non-Accounting Safeguards Order* ¶ 192. It has further recognized that "incumbent LECs could circumvent the nondiscrimination provisions of section 272 by offering growth discounts for which, as a practical matter, only their affiliates would qualify." *Id*. In light of this risk, and finding that growth discounts offered no "affirmative benefit" to the development of competitive access markets, the Commission expressly prohibited the use of growth discounts in interstate switched access service tariffs. *Access Charge Reform NPRM* ¶ 135.

B. BellSouth's Switched Access Tariff Seeks To Establish Impermissible Growth Discounts Which Would Discriminate In Favor Of BellSouth's Long Distance Affiliate.

Though expressly prohibited by the Commission, BellSouth's proposed SWA Contract Tariff would establish a discriminatory growth discount that would favor BSLD over large, established IXCs such as AT&T. BellSouth's SWA Contract Tariff, which offers discounts based on percentage growth from a fixed customer base, has a discriminatory impact on established IXCs because they start from a large customer base, from which it is difficult to grow annually on a high percentage basis. *See* King Dec. ¶ 27. Indeed, the customer base of large IXCs is likely to shrink as BSLD enters into the long distance market in various BellSouth service territory states. *Id*. Similarly, the gradual expansion of local competition in the BellSouth service territory will mean that, for an increasingly substantial number of calls, a CLEC -- not BellSouth -- will be the originating and/or terminating carrier, and established IXCs will owe access charges to various CLECs rather than to BellSouth. *Id*. BSLD, on the other hand, begins with a very small customer base. As BSLD enters the interLATA market, however, it will be able to leverage BellSouth's monopoly customer base into a large share of the long distance market, mostly at the expense of the large IXCs. *Id*. ¶ 31. Thus, even though AT&T's total access minutes may be significantly larger than those of BSLD, BSLD will be able to show "growth" in its initially small volumes, and on that basis obtain a larger volume discount and lower access charges than AT&T and other large IXCs. *Id*.

BellSouth's growth-discount scheme is contained in its BellSouth SWA Contract Tariff filed with the Commission,[17] and is repeated in BellSouth's filings in all its service territory states, including Florida and Tennessee.[18] King Dec., ¶¶ 21-26.

Under the terms of the federal tariff, effective in the 8 MSAs[19] in which BellSouth has pricing flexibility pursuant to Part 69, Subpart H, of the Commission's rules, BellSouth is making available volume discounts to carriers that agree to execute a multi-year contract. In its explanation accompanying the filing, BellSouth describes its SWA Contract Tariff as a "volume and term plan" discount, but the increasing volume requirements make clear that the SWA Contract Tariff is a "growth" tariff. For example, these "volume discounts" are available over a five-year contract period for annual growth in switching usage compared to a specified minimum

[17] BellSouth Telecommunications, Inc. Tariff F.C.C. No. 1, Section 26, BellSouth SWA Contract Tariff, Original Page 26-1 et seq. (eff. May 18, 2002) ("BellSouth FCC Tariff").

[18] BellSouth Telecommunications, Inc. – Alabama, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff AL2002-01, eff. June 17, 2002; BellSouth Telecommunications, Inc. – Florida, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff FL2002-01, eff. June 17, 2002; BellSouth Telecommunications, Inc. – Georgia, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff GA2002-01, filed June 6, 2002; BellSouth Telecommunications, Inc. – Kentucky, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff KY2002-01, eff. June 28, 2002; BellSouth Telecommunications, Inc. – Louisiana, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff LA2002-01, eff. June 20, 2002; BellSouth Telecommunications, Inc. – Mississippi, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff MS2002-01, eff. June 14, 2002; BellSouth Telecommunications, Inc. – North Carolina, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff NC2002-01, issued May 23, 2002; BellSouth Telecommunications, Inc. – South Carolina, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff SC2002-01, eff. June 26, 2002; and BellSouth Telecommunications, Inc. – Tennessee, Access Services Tariff, E26.1 BellSouth SWA Contract Tariff TN2002-01, issued June 28, 2002.

[19] Those eight MSAs are Montgomery, AL; Jacksonville, Miami/Ft. Lauderdale/Hollywood, Orlando, and Panama City, FL; Atlanta and Columbus, GA; and LaFayette, LA.

level.[20] King Dec. ¶¶ 17-19. To receive the discount, a carrier must achieve growth each year over the minimum level, and the discount is applied only to revenues that exceed the revenues associated with the stated minimum. In the first year, a 7% discount is available for usage in excess of the stated minimum, a 10% discount is given for growth of 2-10% over the stated minimum level, and a 15% discount is available for if growth exceeds 10% of the stated minimum. In the second and third years, a carrier must achieve at least 2% growth over the stated minimum to receive a discount, and in the fourth and fifth years, 10% growth is required to receive a discount. *See* BellSouth FCC Tariff, Original Page 26-5. The discounts increase to a maximum of 35% for more than 10% growth over the stated minimum in the fifth year of the contract. *Id*. ¶ 20.

In its North Carolina filing, BellSouth is candid about the purpose of the SWA Contract Tariff. There, BellSouth admits that it provides "discounts based upon positive incremental local switching usage." Hatchcock Letter, 2. Once AT&T realized the true effect of this tariff, it filed a complaint against BellSouth in North Carolina on the grounds that the BellSouth SWA Contract Tariff is discriminatory and anticompetitive.[21] King Dec. ¶ 22. On August 13, 2001, the NCUC issued its Order Disapproving Proposed Tariff.[22] Specifically, the NCUC rejected

[20] This specified minimum level is the carrier's projected local switching minutes for the first year of the contract based on a linear regression of the trend of the most recent 18 months' local switching usage prior to the beginning of the contract. King Dec. ¶ 17.

[21] Complaint for Anticompetitive Activity Pursuant to N.C.G.S. 62-73; 62-133.5(a)(iii) and (iv); 62-133.5(d) and (e); and 62-134; and Commission Rule R1-9 and Motion to find Tariff Noncompliant or Suspend Tariff for Failure to Comply with N.C.G.S. 133.5(a)(iii) and (iv); 62-133.5(a) and (e) and Commission Tariff Rule R9-4, *In the Matter of BellSouth Telecommunications, Inc. Intrastate Access Services Tariff/New Section 26/BellSouth SWA Contract Tariffs*, Docket No. P-100, Sub 30, Docket No. P-55, Sub 1365 (N.C. Util. Commn.).

[22] Order Disapproving Proposed Tariff, In the Matter of Complaint for Anticompetitive Activity and Motion to Find Tariff Noncompliant or Suspend Tariff and Tariff Filing by BellSouth Telecommunications, Inc. to Establish Contract Rates for Switched Access Rate Elements,

BellSouth's North Carolina SWA Contract Tariff as being "biased" and "not being in the public interest." *NCUC Disapproval Order* at 4, 5. The NCUC did not accept BellSouth's claim that the growth tariff would help BellSouth retain traffic on its network and stated that BellSouth should offer a discount based on volumes:

> if the aim is to stimulate the volume of purchases (and, hence, revenue), it would better serve the public interest if the discounts offered were volume-based, instead of being based upon percentage increases over a baseline. After all, even a relatively modest percentage increase in the volume of purchases from a high-volume IXC could dwarf the increased volume coming from a low-volume IXC or a group of them. This would mean that much more revenue for BellSouth.

Id. at 5 (emphasis in original). The NCUC "encourage[d] BellSouth to experiment with volume-based discounts for access service that are not biased against high-volume IXCs."

Once its true nature as a growth discount scheme is revealed, the tariff is indefensible.[23] It serves only to give an advantage to entities such as BSLD that are growing, as opposed to larger, more established carriers such as AT&T that are experiencing declining usage and are

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Docket No. P-55, Sub 1365 & 1366, N.C. Util. Comm. (filed Aug. 13, 2002) (the "NCUC Disapproval Order").

[23] A similar scheme has already been rejected by at least one state commission. In 1999, Southwestern Bell Telephone Company ("SWBT") filed a "growth" tariff for intrastate switched access service that provided a discount for each 10% increase in annual MOUs, but the Texas Commission revoked the tariff for being "discriminatory and anticompetitive." *See* Order, *Complaint by AT&T Communications of the Southwest, Inc. Regarding Tariff Control Number 21302—Switched Access Optional Payment Plan (OPP)*, Docket No. 21392 (SOAH Docket No. 473-99-1963) (Texas PUC March 1, 2000). ("*Texas Growth Tariff Order*"). The Texas Commission recognized that, once SWBT received Section 271 authorization, it would capture a "significant share" of the interLATA long-distance traffic, with a corresponding decline in the share held by existing IXCs, which would make it "impossible for [existing IXCs] to achieve the maximum discounts" under the proposed tariffs. *Id.* at 6. On that basis, the Texas Commission determined that the tariffs were "discriminatory and anticompetitive because [the] highest discount is not functionally available to all IXCs." *Id*. at 8. The Texas Commission's reasoning applies equally to BellSouth's SWA Contract Tariff.

unlikely to be able to increase their traffic to qualify for a discount.[24] As a result of the discriminatory design of BellSouth's SWA Contract Tariff and the skewed discounts it provides, BSLD customers will have lower per-minute switched-access rates than AT&T customers with the same amount of traffic, even though AT&T will have much larger total volumes. While discounts based on absolute volumes may reasonably reflect the economies of scale, there is no justifiable basis for a rate discount based on relative volume growth, particular where, as here, the low base of the BellSouth affiliate makes significant growth percentages possible even when absolute volume growth is insignificant and provides no economies to BellSouth. King Dec., ¶¶ 27-32.

In connection with BellSouth's application for Section 271 authorization for the states of Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, BellSouth has claimed that its BSLD affiliate cannot take advantage of the SWA Contract Tariff. This is incorrect. BellSouth's first explanation, advanced on August 5, 2002, was that BSLD had not been a BellSouth switched access customer for 18 months as required by the Tariff: "*Obviously*, BSLD does not have '18 months' local switching usage prior to the beginning of the contract . . . .'"[25] Seen days later, however, BellSouth conceded that "BSLD has in fact been almost exclusively a

[24] The tariff also discriminates by restricting the rights of IXCs to cancel the Contract in response to other offerings by BellSouth. Under the tariff, an IXC can cancel the contract only once, on the anniversary date of the contract, to subscribe to another contract tariff. BellSouth FCC Tariff, Section 26.1.2(I). A similar provision appears in each state tariff. This restriction will allow BellSouth to make improved offers to its BSLD affiliate that cannot be adopted by IXCs that have already changed their contract once, resulting in blatantly discriminatory terms. King Dec., ¶¶ 19, 35 n.25.

[25] Joint Reply Affidavit of John A. Ruscilli and Cynthia A. Cox, In the Matter of the Application of BellSouth Corporation, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Alabama, Kentucky, Mississippi, North Carolina and South Carolina, WC Docket No. 02-150 (filed Aug. 5, 2002), at ¶ 76 (emphasis added).

terminating switched access customer for 18 months."[26] Then, 24 hours later, the story changed again. BellSouth admitted that BSLD is a "BellSouth switched access customer with respect to both interstate and intrastate traffic" and "the nature of the BSLD switched access minutes is predominantly terminating traffic that originated outside the BellSouth region and terminating traffic that originated from wireless providers."[27] Clearly, BSLD's status as a switched access customer for the past 18 months would qualify BSLD to take advantage of the Tariff, and BellSouth's refusal candidly to admit as much is telling. King Dec., ¶ 32.

BellSouth has also argued that BSLD cannot take service under the SWA Contract Tariff because BSLD failed to sign up during the 30-day ordering window and BSLD does not have the minimum number of minutes to qualify. Aug. 12 Letter at 2. BellSouth's assertion that BSLD failed to meet the minimum number of minutes under the Tariff is plainly wrong. The Tariff is based on the individual customer's usage during the 18 prior months, and that usage becomes the base-line against which future growth (and the size of the discounts) is measured. As the Executive Summary of the North Carolina SWA Contract Tariff filing makes clear, "[t]he minimum local switching usage is defined as the projected year 1 local switching usage based upon the trending of the most recent available 18 months local switching usage prior to the beginning of the term. Each customer's minimum local switching usage will determine which of

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[26] Letter from Sean A. Lev, BellSouth counsel, to Marlene H. Dortch, Secretary, FCC, In the Matter of the Application of BellSouth Corporation, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Alabama, Kentucky, Mississippi, North Carolina and South Carolina, WC Docket No. 02-150 (August 12, 2002) (emphasis in original) ("Aug. 12 Letter").

[27] Letter from Sean A. Lev, BellSouth counsel, to Marlene H. Dortch, Secretary, FCC, In the Matter of the Application of BellSouth Corporation, Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Alabama, Kentucky, Mississippi, North Carolina and South Carolina, WC Docket No. 02-150 (August 13, 2002) ("Aug. 13 Letter").

three discount bands the customer is eligible for."[28] The Tariff also makes clear in Section 26.1.2.A that each carrier signing up for the Tariff must agree with BellSouth on the "Minimum Usage Discount Table." Thus, under the Tariff, the "Minimum Usage Discount" is a negotiated number for each participating carrier based on that carrier's usage for the prior 18 months, and each contracting party will have a separate minimum usage amount. BellSouth's contention that the Tariff contains an absolute minimum usage amount that all potential carriers must satisfy (and therefore stands as an impediment to BSLD taking service under the Tariff) is nothing more than after-the-fact spin. King Dec., ¶ 33.

BellSouth also attempts to claim that there is no Section 272 issue because BSLD cannot take service under the SWA Contract Tariff. The Commission accepted this rationale in the *Five-State 271 Order*, finding that BSLD could not take service under the SWA Contract Tariff. *Five-State 271 Order,* ¶ 274. With the passage of time, the growth in BSLD's traffic, and the increasing number of states in which BSLD can offer long distance service, this rationale may no longer apply with respect to the federal or state tariffs.[29] But even assuming, *arguendo,* that

[28] Hatchcock Letter, Executive Summary at 2. This Executive Summary attached to the North Carolina filing was not included with the federal filing, but the same principle for determination of the minimum usage levels would apply to the federal tariff.

[29] **[BEGIN BELLSOUTH PROPRIETARY]**

[END BELLSOUTH PROPRIETARY]

BSLD cannot take service under BellSouth's SWA Contract Tariff, the Commission's pricing flexibility rules allow an ILEC to provide service under a contract tariff to its long distance affiliate only after the ILEC certifies that it provides service under the contract tariff to an unaffiliated carrier. 47 C.F.R. § 69.727(a)(2)(iii). This provision specifically references both Section 272 for the definition of the "long-distance affiliate" and 47 C.F.R. § 64.1903 relating to obligations of ILECs with respect to their long-distance affiliates under Section 272. Accordingly, any effort by BellSouth to use SWA Contract Tariff to meet its certification requirements under 47 C.F.R. § 69.727(a)(2)(iii) clearly raises Section 272 concerns. As BellSouth has now made clear that BSLD has been a switched access customer for 18 months, there is no impediment to BellSouth entering into the same arrangement with BSLD once BellSouth certifies that it provides service under the SWA Contract Tariff to an unaffiliated party. Moreover, BellSouth's use of the linear regression projection methodology to compute the minimum usage amounts means that BSLD will satisfy any minimum usage requirements in the near future. King Dec., ¶ 34.

It would clearly be inconsistent with Section 272 for BellSouth to enter into a growth arrangement under the SWA Contract Tariff with BSLD. Given BellSouth's dissembling with respect to BSLD's eligibility to take service under the SWA Contract Tariff, BellSouth cannot demonstrate that it complies with Section 272 unless it agrees not to use the SWA Contract Tariff as the basis for a future Contract Tariff with BSLD or to certify under 47 C.F.R. § 69.727(a)(2)(iii) that it is providing service under SWA Contract Tariff and is thus eligible to enter into a similar arrangement with BSLD.[30]

[30] The tariff is also discriminatory in restricting the rights of IXCs to cancel the Contract in response to other offerings by BellSouth. Under the Tariff, an IXC can cancel the contract only once to subscribe to another contract tariff. (Section 26.1.2(I)). This cancellation right is limited to the anniversary date of the contract. As a result, BellSouth may be able to make improved

CONCLUSION

For the foregoing reasons, BellSouth's joint application for authorization to provide in-region, interLATA services in Florida and Tennessee should be denied.

Respectfully submitted,

/s/ Mark C. Rosenblum

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October 10, 2002

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offers to its BSLD affiliate that cannot be adopted by IXCs that have already changed their contract once. A similar provision appears in each state tariff.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of October, 2002, I caused true and correct copies of the forgoing Comments of AT&T Corp. to be served on all parties by mailing, postage prepaid to their addresses listed on the attached service list.

Dated: October 10, 2002
Washington, D.C.

/s/Darlene Cash

Darlene Cash

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